

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2003-0618, Richard B. Hajek & a. v. Philip K. Hajek & a., the court on September 21, 2004, issued the following order:**

The petitioners appeal an order of the Sullivan County Probate Court (Eeeney, J.) issued in a partition case. They contend that the court erred when it granted an easement for right-of-way across the land that was the subject of the partition action. In their cross-appeal, the respondents contend that the probate court erred in dismissing their petition for partition. We affirm.

The petitioners have a two-thirds interest in a seventy-five acre parcel of land in Lempster. The respondents have a one-third interest in the same parcel. In or around 1990, the respondents purchased a fifty-acre landlocked parcel of land adjacent to and to the rear of the seventy-five acre parcel.

The petitioners subsequently filed a petition for partition. After a trial, the probate court ordered the petitioners to pay \$38,226 to the respondents in return for the conveyance of their one-third interest in the parcel. The probate court also ordered the petitioners to convey to the respondents an easement for right-of-way over the seventy-five acre parcel. This appeal followed.

The petitioners argue that the probate court exceeded its authority under RSA chapter 547-C (1997 & Supp. 2003), when it ordered them to convey to the respondents an easement for right-of-way over the seventy-five acre parcel. We disagree.

The question presented is one of statutory interpretation. This court is the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole. Remington Invs. v. Howard, 150 N.H. 653, 654 (2004). In interpreting a statute, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. *Id.* Where the language of a statute is clear on its face, its meaning is not subject to modification. *Id.* Unless we find that the statutory language is ambiguous, we need not look to legislative intent. *Id.* Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation. In the Matter of Watterworth & Watterworth, 149 N.H. 442, 445 (2003). We review the probate court's interpretation of a statute *de novo*. See Remington Invs., 150 N.H. at 654.

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We begin by examining the relevant provisions of RSA chapter 547-C. RSA 547-C:22 provides:

Whenever property is so situated or is of such a nature that it cannot be divided so as to give each owner his or her share or interest without great prejudice or inconvenience, the whole or a part of the property may be assigned to one of them, the assignee paying to the others who have less than their share such sums as the court shall award or order.

RSA 547-C:30 further provides: "Proceedings under this chapter shall be remedial in nature. The provisions of this chapter are to be liberally construed in favor of the existence of broad equitable jurisdiction by the probate court in any proceeding pending before it."

We conclude that the relevant language of RSA chapter 547-C is unambiguous. According to the plain language of RSA 547-C:22, when the division of a parcel of land would result in great prejudice or inconvenience, the probate court has the authority to order one or more of the parties to sell their interest in the parcel to the other party or parties. RSA 547-C:22 does not give the probate court express authority to create an easement for right-of-way over the parcel that is the subject of the partition action. RSA 547-C:30, however, directs us to construe the provisions of the statute liberally in favor of the existence of broad equitable jurisdiction of the probate court.

Moreover, in an early case, we stated that the "beneficial and convenient partition of real estate will often require that a right of way, or some other privilege or easement, should be given to one share in the parts assigned to other shares." Cheswell v. Chapman, 38 N.H. 14, 16 (1859). Likewise, in a recent case, we held that an action to partition property is one that calls upon the court's equity powers, so that complete justice may be done by such means as are appropriate to the special circumstances and situation of each particular case. Pedersen v. Brook, 151 N.H. \_\_, \_\_, 851 A.2d 627, 629 (2004). We have also stated that probate courts have full authority to try issues relating to the partition. *Id.*

In the present case, after ordering the sale of the respondents' interests, the probate court ordered the petitioners to convey to the respondents an easement for right-of-way over the seventy-five acre parcel that was the subject

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of the partition action. Because RSA 547-C:30 directs us to construe the provisions of the statute liberally in favor of jurisdiction of the probate court, and because we have previously held that the probate court has the full authority to try issues relating to the partition, we conclude that the probate court acted within the scope of its authority when it ordered the petitioners to convey to the respondents an easement for right-of-way over the seventy-five acre parcel.

In their cross-appeal, the respondents allege that in the midst of the trial, the probate court dismissed their petition for partition “suddenly and without notice.” The respondents further allege that the probate court’s effective dismissal of their cross-petition constituted an error of law. We disagree.

The record reveals that the following colloquy ensued at trial:

[RESPONDENTS’ ATTORNEY]: Your Honor, we don’t believe it’s impossible for you to award the property to the respondents today upon payment of the petitioner[s]’ shares. I - - I don’t believe we’ve - - we’ve caused ourselves to lose that aspect of the trial through our pleading. It may not be perfectly clear, apparently it’s not, but I believe it is [pled] that we seek awarding of the property. Certainly, that’s what our request for findings today suggests.

[COURT]: Well, it isn’t clear, but - - but earlier in this trial, I thought you agreed that the issues were going to be price, fees, and right of way.

[RESPONDENTS’ ATTORNEY]: Perhaps, I failed to object at a critical time, but I did not intend to agree, as such.

[COURT]: All right. I’m going to let you go. Go ahead.

Based on the colloquy set forth above, we conclude that the trial court did not dismiss the respondents’ cross-petition for partition effectively or otherwise. To the contrary, the record demonstrates that even though the probate court found that the respondents’ request was unclear, it allowed the respondents to present evidence with respect to why the probate court should award the

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seventy-five acre parcel to them. Accordingly, we conclude that the probate court committed no error.

Affirmed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox  
Clerk**

Distribution:

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